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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/779,448

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Bruce K. Zeller

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02/13/2006

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EXAMINER

JOERGER, KAITLIN S

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/779,448

Applicant(s)

ZELLER, BRUCE K.

Examiner

Kaitlin S. Joerger

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-14, 16-28 and 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7, 9-12, 16-21, 23-26, 30, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Hart (5,927,513).

Hart teaches an apparatus for separating comprising: a frame, 16; an adjustable screen, 14, position over top of the frame; a removable trough, 120; and a motor, 74. The apparatus further comprises a wheel, 36. The adjustable screen includes a lip member, 60 and 62, a plurality of vertical support bars, 48, 50, and 55; and horizontal cross members 52 and 54. The trough includes a lip and handles, see figure 6. The motor is attached to at least one horizontal cross member, 54, via a mounting plate, see figure 4. The apparatus further comprises a vertical bar member of adjustable height, 30 and 32, see column 3, lines 40+.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (5,927,513) in view of Haffner (3,307,698).

Hart teaches all of the features of the claimed invention, including a vertical bar member, 30 and 32, of adjustable height attached to the bottom surface of the screen. Hart does not however teach a tow bar attached to the front end of the frame. Haffner teaches separating apparatus that includes a tow bar, 26, attached to the frame. He further teaches support bar, 32, attached to the tow bar, 26.

It would have been obvious to one of ordinary skill in the art to include the tow bar of Haffner on the frame of the separating apparatus of Hart in order to attach the separator to a vehicle in order to more easily move it to different locations.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (5,927,513) in view of Haffner (3,307,698) as applied to claim 4 above, and further in view of Myer (1,011,889).

Hart teaches all the limitation of the claimed invention except for a crank shaft attached to the vertical bar member for adjusting the height of the vertical bar member. Haffner teaches a crank handle, 46, attached to a vertical bar member, 44, for adjusting the height of the bar, however, the bar member of Haffner is a leg member and is not attached to the bottom surface of the screen member.

Myer teaches a crank handle, 43, connected to vertical bar member, 47, which is connected to an underside of a screen member, see figure 3. It would have been obvious to one

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of ordinary skill in the art to use the crank arm of Myer on the adjustable height vertical member of Hart in order to make it easier to adjust the height of the screen member.

Claims 13, 14, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (5,927,513) in view of Waites, Sr. et al. (5,361,911).

Hart teaches all of the limitations of the claimed invention except for the mounting brackets. Waites, Sr. et al. teaches mounting brackets, 18, for mounting horizontal cross bar members, wherein the brackets comprise an opening for retaining the horizontal cross bar member. The brackets further comprise an outer layer, middle layer, and inner layer, see figure 7 and column 5, lines 8+.

It would have been obvious to one of ordinary skill in the art to use the mounting brackets of Waites, Sr. et al. on the separating screen of Hart if one desired to be able to allow the cross bar members to be easily replaced by making them detachable from the vertical support bars.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (5,927,513).

Hart does not teach a method for separating, but he does teach a frame and a screen positioned over the frame, wherein the frame and screen are movable connected at one end and the screen is adjustable in height; the height of the screen can be raised at it adjustable end; material is poured onto the screen to be separated; and a motor is used to vibrate the screen to assist in passing material through the screen; and material that does not pass through the screen is collected in a removable trough.

While Hart does not specifically teach a method for separating, it would have been obvious to one of ordinary skill in the art to perform the method steps of claim 31 when using the apparatus taught by Hart in its usual and expected fashion as Hart teaches a separating apparatus that performs all of the claimed method steps.

Claims 8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (5,927,513) in view of Montgomery (3,162,600).

Hart teaches all of the limitations of the claimed invention except for a platform attached to the frame for supporting the removable trough. Montgomery teaches a portable screening apparatus with a removable trough, 40, that is supported on a platform, 16.

It would have been obvious to one of ordinary skill in the art to use the platform and removable trough of Montgomery with the portable separator taught by Hart in order to easily transport the trough to dump the oversize pieces at a different location.

#### ***Allowable Subject Matter***

Claims 15 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Waites, Sr. et al. teaches mounting supports, however, the reference is silent about a middle layer that is an isolation layer. The examiner could not find a teaching among the prior art that taught a mounting support with a middle layer that acts as an isolation layer.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaitlin S. Joerger whose telephone number is 571-272-6938. The examiner can normally be reached on Monday - Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ksj

3 February 2006



**EILEEN D. LILLIS**  
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